

Memorandum

To: Land Use & Climate Change GMA Advisory Committee and Joyce Phillips, CTED

From: J. Tayloe Washburn

Date: July 21, 2008

Subject: Homework Response No. 2: Comprehensive Proposal for GMA Amendments that Can Help Reduce Greenhouse Gases and Attain State Goals

I. FOUR AREAS OF GMA I SUGGEST LUCC FOCUS ITS ATTENTION ON

1. More Compact Urban Communities: How to leverage SEPA and state funds to achieve the far more compact development we need as a state in cities, or their subareas, to reduce VMTs and meet the state climate change goals
2. Moving TDR Programs into GMA: How to inject a Transfer of Development Rights (“TDR”) planning process more centrally into the GMA planning process, and thus promote less sprawl in our rural, farm and natural resource lands, while also providing more compact development in cities.
3. Financing needed infrastructure: How to avoid the mistakes we made as a state when we adopted GMA in 1990-91 and failed to adopt a substantive and practical finance program for needed infrastructure. We need now to identify ways to provide cities which choose to develop in a dense way with the infrastructure resources required to make sustainable cities effective and attractive places to live.
4. Essential Public Facilities. Improving our ability to build essential public facilities when and where we need it: For infrastructure we can fund and which we know is needed to promote compact and sustainable development, how can we improve GMA’s provisions by ensuring it is in place when we need it?

II. SUMMARY OF OVERALL DIRECTION OF PROPOSED GMA AMENDMENTS

- VMTs can be significantly reduced over time through less sprawl and concentrated urban growth.
- We must change the way we do business at state, regional and local levels if we are to achieve greater success in encouraging citizens to live in urban centers which are compact, well-designed, affordable, and provided with needed infrastructure.
- This proposed legislation discussed in this memorandum seeks to encourage (not mandate) and provide tangible incentives to cities to adopt into their development regulations performance standards needed to address climate change and other environmental impacts. If they do so, it would have the intended effect of providing a far simpler and predictable permit system for developers, designed to lead to increased investment in urban centers in future years.
- These measures call for analysis by local jurisdictions of climate change impacts, with state assistance and CTED guidance in the form of a model comprehensive plan elements, model development regulations, and related non-project SEPA analysis
- These measures aim to incentivize adoption by local jurisdictions of plans calling for compact development in cities, accompanied by non-project comprehensive SEPA review of environmental impacts of plan or subarea plan, which includes analysis of climate change and other environmental impacts (maximum build-out analysis) and identifies appropriate mitigation to reduce these impacts beyond a threshold of significance. The SEPA review proposed to be conducted on model CTED plan elements may be incorporated in local subarea plan SEPA review. State incentives and CTED assistance are built into this provision.
- Based on impacts and mitigation identified in local jurisdiction non-project subarea EIS jurisdictions are encouraged and incited to adopt any needed development regulations to address identified impacts and provide mitigation in targeted areas of compact development
- Cities which chose to do the work required to meet the requirements set forth above will have the option of removing any SEPA review (or appeals) provisions from subsequent project-level development proposed in these areas of concentrated or compact growth.
- To help preserve forest, rural and farm lands, with their carbon sequestration potential, and address the legitimate concerns of property owners in those areas with

their land value, an amendment to GMA is set forth below which would elevate the role of the transfer of development rights (“TDR”) planning tool. While a TDR program can be complicated to design and implement, and needs to reflect the local market factors and local preferences regarding receiving sites and what form of benefit the TDR takes, it is time to encourage all GMA jurisdictions to use the TDR tool both to promote compact urban development and prevent greater sprawl. A balanced approach to our legislative package should include a clear facilitation of compact urban growth hand in hand with an equally clear commitment to use tools such as TDR to slow sprawl and conversion of rural, resource and farm lands outside of UGAs.

- Essential public facilities (“EPFs”) are a vital component to successful compact cities and thus our effort to reduce VMTs. Existing GMA provisions have proven to be ineffective in achieving the timely siting of EPFs, thus adversely affecting our ability to provide the infrastructure needed by cities to accommodate more growth in future years and for our region and state to remain competitive. Amendments to GMA are proposed to simplify and expedite this system, while preserving both the opportunity to receive public input in the areas where an EPF is proposed to be sited and the requirement to include reasonable mitigation measures as part of any EPF proposal.

III. OPTIONAL IDEAS FOR LUCC CONSIDERATION WHICH ARE NOT ELABORATED ON BELOW

- **Affordable Housing**: Option for LUCC Group consideration: include affordable housing provisions which are either more directive or provide clearer incentives in taking steps to make transit-oriented development (“TOD”) which includes lower cost housing. Specifics can include: 1) a commitment to density prior to receiving any state funds for transportation; 2) reducing or eliminating the parking requirement in dense urban centers; and 3) allowing and encouraging construction of 5/2 (five floors wood over two concrete) housing which is the cheapest way to provide quality and affordable housing.
- **Concurrency**: Option for revising concurrency in ways that will better comport with climate change and VMT goals, and also better incentivize developers. The state mandate to reduce VMTs does not necessarily comport well with the way many jurisdictions approach concurrency, basing it on a LOS system which frequently requires developers to provide more lane capacity for vehicles in order to proceed with development and meet the adopted local LOS standard. More and more urban developers and city planners recognize the increased value of providing a range of alternatives to SOV use as part of the future solution to our growth objectives. Some jurisdictions, such as Redmond, are considering more transit-based approaches to concurrency. I believe our LUCC time would be well-invested in discussing ways in which we can both promote the compact development we want and do so using a

revised concurrency approach that better comports with our VMT goals and places greater emphasis on transit options. I would also like the LUCC to consider a legislative proposal that was not adopted last year (HB 2950), which recognizes that a developer can also achieve concurrency in part by payment of impact fees. If adopted this bill can help reduce VMTs by making it more difficult to prohibit growth where it belongs – in urban centers.

- **Jobs/Housing Balance:** Option: taking new steps to achieve a better jobs/housing balance in those jurisdictions which have a very high ratio. We need to discuss possible ways beyond existing provisions to achieve a balance which promotes climate change VMT objectives. Achieving greater residential density in these jurisdictions will directly assist in reducing VMTs. It is possible to condition the financial incentives and rewards associated with cities which take on sustainable and dense development on their also meeting a designated jobs/housing ratio. The LUCC should first have an objective understanding on the extent to which cities which do have a good jobs/housing ratio in fact do, or do not, result in lower VMTs. It is possible, given employment patterns, that there may not be a material difference in VMTs.
- **Mandate What are Now Optional SEPA Exemptions in Larger Cities.** If the LUCC determines not to recommend what is proposed regarding an area-wide SEPA exemption, as set forth below, others have suggested that making what are now optional SEPA thresholds for development/activities in GMA planning cities required in most if not all cities. A related suggestion is to increase new “optional” threshold levels in designated areas.

IV. CONTEXT FOR SPECIFIC GMA PROPOSALS

A. SEPA AREAS CONTEXT FOR LUCC – HOW CAN WE USE SEPA IN MORE CREATIVE AND TARGETED WAYS TO BETTER PROMOTE OUR CLIMATE CHANGE AND VMT OBJECTIVES?:

1. In areas of greatest desired urban density, such as what some cities term “urban centers” where there are adequate GMA regulations which cover basic SEPA elements of the environment and there are sustainable climate change (“CC”) provisions in place (either through adopted regulations or safe harbor SEPA standards), exempt from SEPA review all subsequent development (and appeals). This would be a great magnet for investment in the areas where we want it to reduce VMTs. One way to do that is set forth below.
2. Consider clarifying and making more attractive and user-friendly Section 240 of the SEPA statute and provisions on Planned Actions and GMA-SEPA integration. These creative tools developed in last 10 years are not used anywhere near as

much as they could and should be. The LUCC should consider if modest refinements might lead to them being utilized more in the future and thus help promote climate change and VMT objectives.

More SEPA-related issues and opportunities are laid out below.

B. LUCC CONTEXT OF SPECIFIC PROPOSALS – WHAT ON-THE-GROUND RESULTS ARE WE TRYING TO ACHIEVE?

If we really want change how we do business as a state and make real progress in reducing VMTs, we must identify and put in place carrots, not sticks, for both developers and cities which step up to CC challenge and opportunities¹.

1. More Compact and Sustainable Cities: We must focus on specific ways to:

- a) encourage cities to develop more sustainable, affordable and well-designed compact areas;
- b) provide them with the resources for needed infrastructure (broadly defined);
- c) provide them with needed resources to do an effective job at subarea phase in SEPA EIS; and
- d) reward them when they choose to do so and successfully follow through. Unless and until we build cities right, and understand why many citizens continue to opt for suburbs, our efforts will not attain objectives.

2. What do we want to take place in areas targeted by cities for compact development (and reduced VMTs). My model of a city that is incented and rewarded for choosing to take on a lot of density and develop in a sustainable way would include as possible features (each of which possibly needs help in form of proposed SEPA, GMA or other laws/state regulations) the following:

- a) priority access to existing state funds in a variety of areas such as infrastructure, open space, housing, etc;
- b) identification of ways to leverage anticipated future growth in urban centers where we want it, in order to reduce VMTs, so that cities would be able to bond or otherwise raise revenue upfront, paid back over time by future development;
- c) a thorough subarea EIS or a sequence of subarea SEPA documents over time focused on more compact development in designated growth areas, funded as needed and reimbursed in some fashion over time by latecomer fees from developers who will reap the benefits of this upstream EIS work;

¹ I recognize some LUCC members and staff may feel that more “sticks” are required to achieve the density needed to meet our GG targets. I look forward to hearing their specific proposals, and suspect a combination of carrots and sticks will be what we put forward.

- d) based on sustainability standards developed by CAT and other state sources and the mitigation identified by area-wide EIS to address maximum build out EIS analysis and CC issues, the City adopts any additional development regulations needed to ensure mitigation is in all projects and that it covers key areas of environment;
- e) the City has incorporated into the heart of its comprehensive plan and regulations a TDR receiving site program, one whose impacts (i.e. the environmental impacts of any additional height/FAR secured from buying TDR) would already have been analyzed and mitigated in area-wide EIS; the City plan element also includes incentives to provide in public and private infrastructure sustainable street design, green streets, and stormwater design;
- f) it has revised its concurrency ordinance to encourage and allow developers to achieve concurrency not through only new lane capacity, but increased access to transit and non-motorized mobility options; and
- g) it includes something akin to local design review or other efficient and effective local public process to do what we can to ensure that planned density is well-designed and sensitive to adjacent residents and neighborhoods. Having well-designed denser areas is key to their success, and any changes we propose need to recognize this.

3. How Do We Do a More Effective Job in Reducing VMTs by Attracting Developers to Invest in Dense Urban Areas?

This memo submits that an effective way to reduce VMTs in coming years is to build more compact cities which are developed in a sustainable manner. It suggests ways in which cities might be incented and provided with increased financial resources to do so, and calls on the LUCC to address GMA's long-standing Achilles Heel, which was our failure to provide adequate infrastructure financing for cities at the time GMA was adopted (or since). Another foundational requirement to meet our goals for compact growth in cities is to provide sustained and positive reasons for the development community to invest in future comprehensive plans which call for concentrated and sustainable development. It is critical to create a framework that will provide a powerful reason for developers to get in the game and invest in these sustainable communities. We really need to change the paradigm for them -- through carrots, not sticks. We can make a big step forward in getting developers to really become a partner with cities and environmentalists in a more comprehensive manner, if, at the end of the day, we can offer them:

- a) ability to prosper through investing in sustainable compact development in urban centers;
- b) prospect of no SEPA whatsoever in those city areas, outlined above, that have conducted prior SEPA review at a city or subarea level and that have addressed both SEPA and CC goals and standards through adoption of clear and predictable development regulations;

- c) clear and real incentives in form of reduced costs or added height/FAR if they choose to exceed adopted CC standards;
- d) similar to this, clear incentives for them to want to participate in a TDR program; and
- e) possibly reduced impact fees if they can demonstrate a CC/reduced VMT program which minimizes need for added infrastructure

4. How Do We Better Improve GMA to Ensure that the Planned and Funded Infrastructure needed to create compact sustainable communities is ready when and where we need it?

EPF reform is proposed to ensure that transportation and other vital infrastructure needed to promote the dense urban centers we need to reduce VMTs is in place when needed. Failure in this area is also a fatal flaw in getting developers in the game. This is discussed in more detail below and in Attachment B.

V. SPECIFIC GMA PROPOSALS ON HOW TO IMPLEMENT MANY OF THESE SUSTAINABLE DEVELOPMENT OBJECTIVES THAT WOULD REDUCE VMTs

A. Amending GMA to Incentivize More Compact Urban Areas with Reduced VMTs – possible Road Map.

The following approach tries to balance the overall state goals with approaches that are most likely to be implemented. It seeks to minimize, to the extent possible, the human and financial resources required of local jurisdictions. Finally, it seeks to understand and reflect in any actions we propose the diversity of jurisdictions and local conditions throughout the state.

A starting point is the recognition that our goal of reducing VMTs is well served by successfully achieving attractive and affordable compact development in our larger jurisdictions. As the discussion continues, we can discuss whether it makes more sense to mandate or create voluntary incentives for greater urban density in UGAs and to require or create incentives for development proximate to public transit. As noted above, an initial carrot-based approach may be most likely to achieve success. The LUCC can discuss if more “sticks” are needed to achieve state VMT objectives.

One approach would be to create incentives (or, if deemed necessary and politically feasible, possibly mandate) for local governments to meet certain performance standards for GHG per capita GHG emissions or per capita VMTs. Per capita GHG emissions might be a more fair and politically palatable statewide standard than per capita VMT reduction because there are a variety of means to reduce GHG emissions other than reducing VMTs and it may be more feasible in Eastern WA and other less urbanized parts of the state to reduce per capita GHG emissions (e.g., through green building standards, fostering forest, farm, carbon sink expansion by TDR transfer programs or

other means) than to reduce per capita VMTs. This is an issue the LUCC and others can discuss.

This approach could be done by:

1. Directing CTED by December 2009 to adopt a model Climate Change (or GHG Emissions) element for local comprehensive plans and model implementing regulations. GMA could be amended to make this element a required or optional element of local GMA comprehensive plans. It is not clear to me that a new goal has to be added to GMA to achieve this purpose. If it is optional, incentives could be provided to adopt it. If it was a requirement, one way to deal with jurisdictions which adopt the model performance standards into their plans and regulations would be to provide a "safe harbor" from GMA Board appeals. It would be logical to include a Transfer of Development Rights ("TDR") component to this comprehensive plan climate change element. A TDR proposal is outlined below and at Attachment A.
2. CTED also would provide SEPA analysis of the model plan element and development regulations that could be plugged-into non project EISs by counties and cities.
3. In the CTED model, specific per capita GHG reduction credits could be assigned to various provisions of local comprehensive plans and development regulations; placing some GG reduction benefit from specified actions.
4. GMA and SEPA could be amended to provide that all development that is consistent with the Climate Change element of the local comprehensive plan and implementing regulations would be exempt from SEPA or, at a minimum, would be exempt from SEPA analysis of climate change impacts. If project-level development were exempted for all SEPA, then the only SEPA appeal allowed would be at the subarea level when SEPA is conducted, and not at the project level. Note that this is somewhat similar to one of the options that has been proposed in one area in California. If a City's subarea EIS identified mitigation measures required in the subarea to address significant impacts, that jurisdiction could choose to adopt local development regulations requiring those mitigation measures and incentives (credits) could be provided to local governments that choose to require such mitigation.
5. Local governments could also be authorized to exempt such development from some or all development fees, as is the case with certain low income housing under RCW 82.02.
6. As is the case with the buildable lands analysis, the per capita GHG reduction could be subject to periodic audits by a state agency or the local government that

might result in loss of SEPA exemptions for conforming development unless local plans and regulations are appropriately revised.

7. Incentives for jurisdictions which choose to participate and put in place the CTED model Plan and development regulation components could include priority access to the State Infrastructure and Economic Development Revolving Funds and other similar existing resources. The fundamental question of how we direct more resources to cities to provide needed infrastructure is key to any climate change/VMT proposals to amend the GMA coming out of LUCC. It is addressed below.
8. A benefit of the general approach outlined above is its use of overall GG reduction performance standards, rather than specific "command and control" requirements. This more flexible approach would allow local governments to employ TDRs from forest and farm resource lands, other strategies to increase or increase the effectiveness of carbon "sinks", green building requirements, and a variety of land use and non-land use strategies to reduce per capita GHG emissions. Such an approach focuses on results and provides opportunities for local creativity and leadership by example and allows for regional differences in conditions and politics.

B. Adopting a Transfer of Development ("TDR") Program Element into Local GMA Plans and Regulations.

As noted above, TDR is one proven approach to both preserving rural, agricultural and resource lands as well as promoting dense developments in cities, with associated positive VMT and climate change sequestration impacts. TDRs are also in principle a key way to redress the diminution in property values outside of UGAs associated with the adoption of GMA. Many jurisdictions in Washington have experimented with various forms of TDR programs. In recent years, Cascade Land Conservancy, a nonprofit organization, has focused on working throughout the state to refine the TDR tool and apply it in a wide variety of communities in Washington. The state legislature has monitored and supported these efforts. CTED over the last year has been working with CLC on developing model TDR programs.

With the adoption of the 2008 state climate change laws, 2009 is an opportune time to invite jurisdictions throughout the state to review and adopt an appropriate form of TDR program for their jurisdiction as part of the GMA planning process. Successful TDR programs accomplish the twin state goals of promoting carbon sequestration outside urban growth areas (UGAs") and reducing VMTs statewide through achieving more compact urban development.

I include in this memo at Attachment A an outline of a specific TDR proposal developed by CLC for discussion at the LUCC as one of our GMA amendments. It is very much a draft, and for discussion purposes only. It is designed in a manner which seeks to

recognize and support the very different local conditions and market factors. While mandating the requirement for participating jurisdictions to engage in some form of a TDR program, the emphasis is on local choices and a flexible structure. We suggest the state legislature and CTED continue to monitor over two years the effectiveness and on-the-ground results of whatever form of TDR programs are adopted.

C. Financing Needed Infrastructure to Create Successful and Sustainable Cities.

As noted above, if we cannot as a LUCC come up with a way to pay for increased levels of planning, SEPA analysis and infrastructure and services needed to make cities work, it is unlikely the efforts of the LUCC and CAT will lead to effective legislation or materially impact VMTs or global warming. Many good minds and groups are grappling in one way or another with this fundamental challenge. Some hold out hope that auction revenue from a future “cap and trade” system will create a significant new and logical source of funding. Others call for reprioritizing access to existing public funding sources at the state and regional levels (see some ideas in this memorandum). Still others are developing new ways to leverage the anticipated future increase in compact sustainable development, through some combination of latecomer fees, legal tax-increment financing and other measures. Innovative new ways of using existing revenue sources such as utility taxes and stormwater fees could also possibly help fund the climate change initiatives.

Any funding package must be fair and logical. The LUCC perhaps can add value to this issue by working to first quantify what added costs may be associated with any GMA amendments it is considering. If feasible, it might then put on the table a range of specific funding strategies which might be considered to fund any new costs proposed. In doing so, it must resist the temptation to simply have private development fund any added costs, as this will simply remove any incentive for developers to invest and take risks in building in more compact and sustainable communities. On the other hand, providing developers with clear and predictable incentives for helping with public infrastructure and planning costs would be a feasible part of an overall strategy.

The state budget funds a wide array of needs each year. In the last year, some state laws provide that the economic, environmental and social threats posed by climate change trends are such that as a state we must take comprehensive measures in all areas to meet the greenhouse gas and VMT goals adopted now as state law. If this is true, two steps that might be helpful in prioritizing use of state funds would be: 1) a state law that requires that all expenditures of state funds must comport with the priorities set to ensure the state meets its climate change goals; and 2) require the adoption of some form of a GMA comprehensive plan by the state itself, which would also help to establish priorities for state actions and expenditure of funds.

D. Essential Public Facilities: Steps to Consider to Helping Better Ensure that Planned and Funded Regional Infrastructure is Available When Needed.

The GMA legislation adopted in 1990-91 made some real progress in recognizing the issues associated with siting essential public facilities or “EPFs”. Section 200 of the statute (Chapter 36.70A RCW) and the associated CTED regulations provide local jurisdictions and the GMA Hearing Boards with some guidance. This has made it possible for jurisdictions in which EPFs are proposed to both mitigate to some extent EPFs but also provide them with the ability to site in optimal locations. However, we need to do a better job in ensuring regional and state EPFs are in place when and where needed. Other regions around the country and world do a far more effective job in this regard, and our failure to do so is affecting our competitiveness as a region and state. Enclosed below at Attachment B is a more detailed description of the limits of existing law and an outline of possible ways to improve on our current GMA provisions. The permitting of EPFs must balance the twin goals of providing needed state and regional (as well as local) infrastructure when and where needed, but also do so in a way that provides reasonable mitigation to affected communities. Perhaps an ad hoc working sub-group of the LUCC can focus on this and any other EPF proposals and report back at our next session with specific recommendations.

ATTACHMENT A – OUTLINE OF TDR PROPOSAL

Note: the following TDR outline has been developed by staff at Cascade Land Conservancy, in consultation with other individuals and organizations. It is very much a draft document, for discussion purposes only. I am discussing a few components with CLC at present. However, it is a good outline for purposes of stimulating LUCC discussion. Both CLC and I intend to get additional input from LUCC members and stakeholders prior to our next LUCC meeting.

DRAFT:

Overview: The TDR Legislation's Substantive Requirements

The legislation requires all jurisdictions in Puget Sound Regional Council association of governments to:

- Develop a transfer of development rights program from a TDR program menu.
- Accommodate 10% of new housing units through TDR.
- For all TDR receiving area, the local jurisdiction shall either 1) exempt TDR receiving areas from SEPA/EIS analysis as authorized under state law or 2) complete a SEPA/EIS analysis at the policy level of the maximum build-out scenario.

The legislation requires Washington State to:

- Create TDR model ordinances.
- Prioritize access to state-based infrastructure funding for jurisdictions with TDR programs that conserve resource lands.
- Fund and prioritize access to the Planning and Environmental Review Fund (PERF) for SEPA/EIS analyses in TDR receiving areas.
- Provide funding to jurisdictions for SEPA/EIS analyses in TDR receiving areas.
- Prioritize state Recreation and Conservation Office (RCO) funding for jurisdictions with TDR programs that conserve resource lands.

Proposed Legislative Framework

Trigger

- All jurisdictions in the PSRC association of governments shall adopt a TDR program from a TDR program menu within three years of the effective date of this bill or the jurisdiction's next comprehensive plan update, whichever comes first.
- In adopting a TDR program, the TDR program must be consistent with the jurisdiction's comprehensive plan and development regulations.
- Jurisdictions outside of the PSRC planning region are encouraged to develop TDR programs.

10% of a jurisdiction's projected housing units shall be accommodated through TDR

- Jurisdictions in the PSRC association of governments shall use TDR to accommodate 10% of their projected housing units.
- To accommodate 10% of each jurisdiction's projected housing units through TDR, the jurisdiction shall create TDR receiving areas. Each receiving area shall have a TDR zoning overlay that defines what development is allowed without TDR by right and what development is allowed with TDR by right.
- This chapter is not intended to change how counties and cities allocate population numbers since population projections are not placed on GMA resource lands.

TDR program menus:

- Jurisdictions shall choose from and adopt at least one of the following TDR menus.
- Within six months of the enactment of this legislation, CTED shall contract with a qualified land trust to develop model ordinances for each of the following menus.
- Regardless of which menu is adopted, each jurisdiction (not the state, PSRC, or a land trust) shall determine where TDR sending and receiving sites are located. Jurisdictions are encouraged to accept development rights from all sending sites in the PSRC region.
- Each jurisdiction shall determine the appropriate TDR transaction mechanisms. Jurisdictions are encouraged to create flexibility in the TDR marketplace by authorizing private party transactions and a municipal TDR bank. To promote marketplace flexibility, the jurisdiction is encouraged to authorize the TDR bank to sell TDR credits and accept in-lieu fees if the bank does not have enough TDR credits to meet demand. Payment of in-lieu fees to a municipal TDR bank does not offend RCW 82.02.020 if the bank uses the payment to acquire additional TDR credits from resource lands.

City/Urban Growth Area TDR Menus:

City/UGA Option One²

Sending Site: Determined by city

Receiving Site: A TDR credit authorizes increased FAR base and/or additional height in TDR receiving sites.

City /UGA Option Two³

Sending Site: Determined by city

Receiving Site: The city creates a planned action ordinance for a receiving area. The planned action ordinance authorizes allowed base density without TDR and additional allowed density with TDR. The planned action's upfront SEPA/EIS analysis addresses the maximum build-out allowed with TDR.

City/UGA Option Three⁴

Sending Site: Determined by city

² This approach has been used in the King County-City of Seattle TDR program since 2000, in San Francisco, CA since 1985, and in Cambria, San Luis Obispo County, CA since the mid-1980s.

³ This approach has been used in Calvert County, MD since 1978, Denver, CO since 1982, and Palm Beach County, FL since 1989.

⁴ The City of Tacoma, WA is considering this approach.

Receiving Site: A TDR credit authorizes “use” flexibility (e.g. allow flexibility of use within mixed-use buildings. For example, code requires a six story building has three floors of commercial and three floors of residential. A TDR credit would allow use flexibility by allowing one floor of commercial and five floors of residential).

City/UGA Option Four⁵

Sending Site: Determined by city

Receiving Site: A TDR credit increases the amount of allowed impervious surface (e.g. parking, warehouses, etc.)

City/UGA Option Five⁶

Sending Site: Determined by county

Receiving Site: A TDR credit increases base density to a density that supports transit (12du/acre).

City/UGA Option Six

Sending Site: Determined by city

Receiving Site: The city develops a TDR receiving site(s) that advance the city’s planning goals. The program may include some, all, or none of the items contained in the above menus.

****** For each city menu, the city is encouraged to place an appropriate cap on the amount of bonus available through TDR.

County TDR Menus:

County Option One

Sending Site: Determined by county

Receiving Site: The county creates a planned action ordinance for an unincorporated receiving area. The planned action ordinance authorizes allowed density without TDR and allowed density with TDR. The planned action’s upfront SEPA/EIS analysis addresses the maximum build-out allowed with TDR.

County Option Two⁷

Sending Site: Determined by county

Receiving Site: The county allows increased residential density inside master planned resorts, fully contained communities, and/or planned unit developments.

County Option Three⁸

Sending Site: Determined by county

Receiving Site: Any increase in residential density beyond the density authorized under current zoning requires TDR credits.

⁵ This approach has been used in Austin, TX since 1981, Redmond, WA since 1995, and Snohomish County, WA since 2007.

⁶ This approach is used in King County, WA

⁷ This approach is being considered in Kittitas County, WA.

⁸ This approach is used in Montgomery County, Maryland, the New Jersey Pinelands, and Pierce County, WA.

County Option Four

Sending Site: Determined by county

Receiving Site: The county develops TDR receiving site(s) that advances the county's planning goals. The program may include some, all, or none of the items contained in the above menus.

** For each county menu, the county is encouraged to place an appropriate cap on the amount of bonus available through TDR

SEPA/EIS requirements in TDR receiving areas

For all TDR receiving areas, the local jurisdiction shall either 1) exempt TDR receiving areas from SEPA/EIS analysis as authorized under state law⁹ or 2) complete SEPA/EIS analysis of the maximum build-out scenario at the policy level.

The legislature shall fund and CTED shall prioritize access to the Planning and Environmental Review Fund (PERF) for jurisdictions conducting SEPA/EIS analyses in TDR receiving areas.

Cities are authorized to charge a late-comers fee to developers in the receiving area. The late-comers fee charged to the developer is to be proportional to the SEPA/EIS costs accrued by the jurisdiction in completing a SEPA/EIS analysis of the receiving area.

Incentives for cities and developers

Cities that develop TDR programs that *result in the conservation of farm and forest land located outside the city's boundaries* and in the unincorporated county shall receive:

- Priority access to state-based infrastructure funding
 - Top tier access shall be given to TDR receiving sites in regional growth centers as defined by PSRC.
 - Second tier access shall be given to TDR cities.
- Priority access to state-based clean technology incentives
- Priority access to the Planning and Environmental Review Fund (PERF) for SEPA/EIS analyses in TDR receiving areas.
- Priority access to RCO funding.

Cities located outside the PSRC region that develop TDR programs that *result in the conservation of resource lands located outside the city's boundaries* are eligible and on equal footing to receiving the incentives listed above.

Incentives for counties to develop robust TDR programs

Counties that coordinate TDR program development with cities shall receive:

- Priority access to the Planning and Environmental Review Fund (PERF) for SEPA/EIS analyses in TDR receiving areas.

⁹ It is expected that the CAT SEPA committee will recommend SEPA exemptions for development that has a net positive impact on climate stabilization and meets additional criteria to be determined by the CAT SEPA committee.

- Priority access to RCO funding.

Monitoring TDR

- CTED shall track TDR program development and report back to legislature in 2013. The report shall include an analysis of TDR programs developed, challenges to developing TDR programs and benefits achieved through TDR.

Note: Consider expanding jurisdictions required to plan with TDR from PSRC region (King, Kitsap, Pierce, Snohomish) to Buildable Lands Counties (King, Kitsap, Pierce, Snohomish, Thurston, Clark. *See*, RCW 36.70A.125).

ATTACHMENT B – OUTLINE OF PROPOSAL TO SIMPLIFY EPF SITING PROCESS

An Opportunity For Reducing Greenhouse Gas Emissions and Dependence on Foreign Oil (Carbon Fuel Use) through simplifying Essential Public Facility (“EPF”) process

A. Context

- Delay in process results in increased congestion/air quality i.e. 520, 405, I-5
- Delay in siting all EPFs (i.e. Brightwater, regional transportation systems) tends to slow move from sprawl to compact urban development, and thus promote VMTs
- Larger cities with insufficient infrastructure will not be as economically competitive or as successful in attracting our citizens to live there, thus leading to a perpetuation of sprawl and VMTs
- We are not getting regional and state EPFs sited as soon as needed. They are built only after long local process, lots of prolonged litigation, such as 3rd Runway and Brightwater projects. Our competition around the nation and world is way ahead of us in funding and timely siting of key infrastructure (ULI)
- Local EPF regulations all too often do not accomplish goal of expediting EPF
- GMA goal of channeling future growth into UGAs is not well-served by insufficient infrastructure, and runs risk of more sprawl and development outside of UGAs
- Current CTED guidelines do not have teeth, and are not used in an effective manner by some locals --- they can be a tool more for delay than expediting, and would benefit from careful review.
- The present regulatory system for EPFs is not working and needs to be fixed. Aside from the general prohibition on the preclusion of the siting of EPFs in GMA, section 200, GMA provides little guidance and is mainly a source of confusion. I.e., do local governments in their required EPF provisions have to allow the siting of EPFs as a matter of right or merely set up a process for the regulation of EPFs. As we have seen, most local governments assume the latter and have more burdensome processes for EPFs than non-EPF development.

The ambivalence in existing law and the intergovernmental conflict over specific major projects demonstrates that the politics are extremely difficult.

One possible solution would be to direct CTED to revise EPF Procedural Criteria. This might be relatively easy to do politically. The CTED Procedural Criteria do not have legal effect, except perhaps persuasive in courts. GMA could be amended,

perhaps just .200, to give the CTED provisions legal effect and perhaps include a model or required local EPF Ordinance.

One of the fundamental problems is that state law does not distinguish and separately address practically important EPF issues. State law must distinguish clearly among: (1) state, regional, and local EPFs; (2) government-sponsored and privately-sponsored EPFs; (3) government-sponsored EPFs where the sponsor and host jurisdiction are (a) the same, and (b) different. Any ambitious reforms of EPF siting must address all of these categories.

SEPA reform is important as part of the solution, both in terms of providing more specifically what the EIS or Checklist must address and time limits for preparation. Administrative review should be specifically limited or eliminated and expedited, if it is allowed. The law should be clarified so that only one administrative SEPA appeal is allowed for a given EPF. Any additional SEPA review would have to be in court, directly to Court of Appeals (COA) on expedited basis and consolidated with any other challenges of the EPF approval.

Other potential SEPA reforms (since SEPA provides primary bases for challenge and delay) would be modification/clarification of lead agency provisions for the various categories of EPFs, perhaps designating a state office/officer to hear SEPA administrative appeals for state and regional EPFs. There are some pointless provisions that adversely affect siting of EPFs, such as provision for Planned Actions that excludes EPFs from eligibility. Why? EPFs would be absolutely appropriate candidates. The SEPA Rules on Phased EISs also could be clarified and made much more EPF-friendly.

Regarding the role of Examiners v. elected officials, we should discuss whether examiners should be limited to deciding quasi-judicial issues and not making or even recommending policy choices. E.g., Examiners should not have authority to even recommend the location for the siting of EPF unless very clear and near-quantifiable criteria have been adopted for the siting of EPF. Under those circumstances, the application of the criteria/standards would be quasi-judicial.

In cases of regional and state EPFs, regulation of siting should be preempted by state or regional commission. Such a reform might make more sense for host jurisdiction and neighboring communities if the state or regional commission also has authority/duty to mitigate/compensate for the impacts/costs incurred by the host jurisdiction, governed by adopted standards for such mitigation/compensation.

B. Possible Legislative Fix to Facilitate Timely Siting of EPFs

- Review state and local statutes and regulations and propose refinements where needed
- Specifically consider:
 - Revise CTED regs to give more teeth and make mandatory for local jurisdictions to adopt
 - Revise EPF statute RCW 36.70A.200 as needed to give more teeth, yet assure process to incorporate feasible mitigation and maybe give more mitigation to affected stakeholders. Specific process set forth below, and a fixed timeline, would be or could be included in statute
 - For all EPF projects, a uniform process, revising 36.70B as needed, could look like something like this:
 - EPF sponsor submits EPF application to local jurisdiction
 - Application to comply with all requirements of CTED regulations
 - SEPA review conducted on EPF proposal
 - Jurisdiction makes recommendation to local Hearing Examiner
 - After SEPA review complete, Quasi-judicial hearing conducted, with all weighing in, public process, etc. This is the time all make their record
 - Examiner closes hearing and record, and makes a recommendation or decision (depending on if it makes sense to have local legislative authority make decision)
 - OPTION: if Examiner makes a recommendation, then have local Council or County Commissioners make a closed record decision
 - After final local decision on EPF proposal, any appeal skips Superior Court (revising 36.70C as needed), and goes straight to Court of Appeals, if possible, on an expedited basis (revising RAP as needed)